21 June 2000

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**Preparatory Commission for the International Criminal Court**
**Working Group on Rules of Procedures and Evidence**
New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

# Working Group on Rules of Procedures and Evidence

## Report of the Working Group

# Chapter 2
# Composition and Administration of the Court

## Section I
## General provisions relating to the composition and administration of the Court

### Rule 4.1
Plenary sessions

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule 4.2, the judges shall:

(a) Elect the President and Vice-Presidents;

(b) Assign judges to divisions.

2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, the Rules and the Regulations and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.

3. The quorum for each plenary session shall be two-thirds of the judges.

4. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions shall be taken by the majority of the judges present. In the event of

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an equality of votes, the President, or the judge acting in the place of the President, shall have a casting vote.

5. The Regulations shall be adopted as soon as possible in plenary sessions.

## Rule 4.2
### Solemn undertaking under article 45

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

(a) In the case of a judge:

"I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations.";

(b) In the case of the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court:

"I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions."

2. The undertaking, signed by the person making it and witnessed by the President or a Vice-President of the Bureau of the Assembly of States Parties, shall be filed with the Registry and kept in the records of the Court.

## Rule 4.3
### Solemn undertaking by the staff of the Office of the Prosecutor and the Registry, interpreters and translators

1. Upon commencing employment, every staff member of the Office of the Prosecutor and the Registry shall make the following undertaking:

"I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.";

The undertaking, signed by the person making it and witnessed, as appropriate, by the Prosecutor, the Deputy Prosecutor, the Registrar or the Deputy Registrar, shall be filed with the Registry and kept in the records of the Court.

2. Before performing any duties, an interpreter or a translator shall make the following undertaking:

"I solemnly declare that I will perform my duties faithfully, impartially and with full respect for the duty of confidentiality.";

The undertaking, signed by the person making it and witnessed by the President of the Court or his or her representative, shall be filed with the Registry and kept in the records of the Court.

### Rule 4.4
Single judge under article 39, paragraph 2 (b) (iii)

1. Whenever the Pre-Trial Chamber designates a judge as a single judge in accordance with article 39, paragraph 2 (b) (iii), it shall do so on the basis of objective pre-established criteria.

2. The designated judge shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.

3. The Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions of the single judge be exercised by the full Chamber.

### Rule 4.5
Code of Professional Conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft Code of Professional Conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 4.16, sub-rule 3.

2. The draft Code shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7.

3. The Code shall contain procedures for its amendment.

## Section II
The Office of the Prosecutor

### Rule 4.6
Operation of the Office of the Prosecutor

In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

### Rule 4.7
Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

### Rule 4.8
Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those

referred to in article 44, paragraph 4, to represent him or her in the exercise of his or her functions.

## Section III
## The Registry

### Subsection 1
### General provisions relating to the Registry

#### Rule 4.9
#### Qualifications and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, and shall transmit the list to the Assembly of States Parties with a request for any recommendations.

2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall, without delay, transmit the list together with the recommendations to the plenary session.

3. As provided for in article 43, paragraph 4, the Court, meeting in plenary session, shall, as soon as possible, elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.

4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President to that effect. The President shall convene a plenary session to decide on the matter. If the Court, meeting in plenary session, decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.

5. The Deputy Registrar shall be elected by the Court, meeting in plenary session, in the same manner as the Registrar.

#### Rule 4.10
#### Functions of the Registrar

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the channel of communication of the Court.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

#### Rule 4.11
#### Operation of the Registry

1. In discharging his or her responsibility for the organization and management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters which may affect the operation of the Office of the Prosecutor. The regulations shall be approved by the Presidency.

2. The regulations shall provide for defence counsel to have access to appropriate and reasonable administrative assistance from the Registry.

### Rule 4.12
Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.

2. The Registrar shall also maintain the other records of the Court.

## Subsection 2
Responsibilities of the Registry relating to Victims and Witnesses

### Rule 4.12*bis*
Responsibilities of the Registrar relating to victims and witnesses

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

(a) Providing notice or notification to victims or their legal representatives;

(b) Assisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with rules 6.30 to 6.30*ter*;

(c) Assisting them in participating in the different phases of the proceedings in accordance with rules 6.30 to 6.30*ter*;

(d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

2. In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

(a) Informing them of their rights under the Statute and the Rules, and of the existence, functions and availability of the Victims and Witnesses Unit;

(b) Ensuring that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality.

3. For the fulfilment of his or her functions, the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific investigation.

4. Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

**Rule 4.13**
Functions of the Victims and Witnesses Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organizations acting at the request of the Court, as appropriate;

(vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

(b) With respect to witnesses:

(i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) Assisting them when they are called to testify before the Court;

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

**Rule 4.14**
Responsibilities of the Victims and Witnesses Unit

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:

(a) Ensure that the staff in the Unit maintain confidentiality at all times;

(b) While recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the Prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

(e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

### Rule 4.15
Expertise in the Victims and Witnesses Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

(a) Witness protection and security;

(b) Legal and administrative matters, including areas of humanitarian and criminal law;

(c) Logistics administration;

(d) Psychology in criminal proceedings;

(e) Gender and cultural diversity;

(f) Children, in particular traumatized children;

(g) Elderly persons, in particular in connection with armed conflict and exile trauma;

(h) Persons with disabilities;

(i) Social work and counselling;

(j) Health care;

(k) Interpretation and translation.

## Subsection 3
Counsel of the defence

### Rule 4.16
Responsibilities of the Registrar relating to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent

with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

(a) Facilitate the protection of confidentiality, as defined in article 67, paragraph 1 (b);

(b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;

(c) Assist arrested persons, persons to whom article 55, paragraph 2, applies and the accused in obtaining legal advice and the assistance of legal counsel;

(d) Advise the Prosecutor and the Chambers, as necessary, on relevant defence-related issues;

(e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;

(f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in sub-rule 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in sub-rule 1, including the financial administration of the Registry, in such a manner as to ensure the professional independence of defence counsel.

3. For purposes such as the management of legal assistance in accordance with rule 4.17 and the development of a Code of Professional Conduct in accordance with rule 4.5, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

## Rule 4.17
## Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in rule 4.16, sub-rule 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 4.18 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person choosing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

### Rule 4.18
Appointment and qualifications of Counsel of the defence

1. A counsel shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel may be assisted by other persons, including professors of law, with relevant expertise.

2. Counsel engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.

3. In the performance of their duties, Counsel shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for counsel adopted in accordance with rule 4.5 and any other document adopted by the Court that may be relevant to the performance of their duties.

## Section IV
Situations that may affect the functioning of the Court

### Subsection 1
Removal from office and disciplinary measures

### Rule 4.19
General principle

A judge, the Prosecutor, a Deputy Prosecutor, the Registrar and a Deputy Registrar shall be removed from office or shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and the Rules.

### Rule 4.20
Definition of serious misconduct and serious breach of duty

1. For the purposes of article 46, paragraph 1 (a), "serious misconduct" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Disclosing facts or information that he or she has acquired in the course of his or her duties or disclosing facts or information on a matter which is *sub judice*, where such disclosure is seriously prejudicial to the judicial proceedings or to any person;

(ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, is of a grave nature that causes or is likely to cause serious harm to the standing of the Court.

2. For the purposes of article 46, paragraph 1 (a), a "serious breach of duty" occurs where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties. This may include, *inter alia*, situations where the person:

(a) Fails to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeatedly causes unwarranted delay in the initiation, prosecution or trial of cases, or in the exercise of judicial powers.

## Rule 4.21
### Definition of misconduct of a less serious nature

1. For the purposes of article 47, "misconduct of a less serious nature" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, causes or is likely to cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of the functions of a person referred to in article 47;

(ii) Repeatedly failing to comply with or ignoring requests made by the Presiding Judge or by the Presidency in the exercise of their lawful authority;

(iii) Failure by the responsible officer to enforce disciplinary measures that have been imposed against the Registrar or a Deputy Registrar and other officers of the Court; or

(b) If it occurs outside the course of official duties, causes or is likely to cause harm to the standing of the Court.

2. Nothing in this rule precludes the possibility of the conduct set out in sub-rule 1 (a) constituting "serious misconduct" or "serious breach of duty" for the purposes of article 46, paragraph 1 (a).

## Rule 4.22
### Receipt of complaints

1. For the purposes of article 46, paragraph 1, and article 47, any complaint concerning any conduct defined under rules 4.20 and 4.21 shall include the grounds on which it is based, the identity of the complainant and, if available, any relevant evidence. The complaint shall remain confidential.

2. All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations, set

aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations.

**Rule 4.23**

Common provisions on the rights of the defence

1. In any case in which removal from office under article 46 or disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.

2. The person concerned shall be afforded full opportunity to present and receive evidence, to make written submissions and to supply answers to any questions put to him or her.

3. The person may be represented by counsel during the process established under this rule.

**Rule 4.24**

Suspension from duty

Where an allegation against a person who is the subject of a complaint is of a sufficiently serious nature, the person may be suspended from duty pending the final decision of the competent organ.

**Rule 4.25**

Procedure in the event of a request for removal from office

1. In the case of a judge, the Registrar or a Deputy Registrar, the question of removal from office shall be put to a vote at a plenary session.

2. The Presidency shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation adopted in the case of a judge, and any decision adopted in the case of the Registrar or a Deputy Registrar.

3. The Prosecutor shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation he or she makes in the case of a Deputy Prosecutor.

4. Where the conduct is found not to amount to serious misconduct or a serious breach of duty, it may be decided in accordance with article 47 that the person concerned has engaged in misconduct of a less serious nature and a disciplinary measure imposed.

**Rule 4.26**

Procedure in the event of a request for disciplinary measures

1. In the case of a judge, the Registrar or a Deputy Registrar, any decision to impose a disciplinary measure shall be taken by the Presidency.

2. In the case of the Prosecutor, any decision to impose a disciplinary measure shall be taken by an absolute majority of the Bureau of the Assembly of States Parties.

3. In the case of a Deputy Prosecutor:

(a) Any decision to give a reprimand shall be taken by the Prosecutor;

(b) Any decision to impose a pecuniary sanction shall be taken by an absolute majority of the Bureau of the Assembly of States Parties upon the recommendation of the Prosecutor.

4. Reprimands shall be recorded in writing and shall be transmitted to the President of the Bureau of the Assembly of States Parties.

### Rule 4.27
Removal from office

Once removal from office has been pronounced, it shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part.

### Rule 4.28
Disciplinary measures

The disciplinary measures that may be imposed are:

(a) A reprimand; or

(b) A pecuniary sanction that may not exceed six months of the salary paid by the Court to the person concerned.

## Subsection 2
Excusing, disqualification, death and resignation

### Rule 4.29
Excusing of a judge, the Prosecutor or a Deputy Prosecutor

1. A judge, the Prosecutor or a Deputy Prosecutor seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.

2. The Presidency shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the person concerned.

### Rule 4.30
Disqualification of a judge, the Prosecutor or a Deputy Prosecutor

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia*, the following:

(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

(b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted is an opposing party;

(a) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

### Rule 4.31
### Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused

Where a judge, the Prosecutor or a Deputy Prosecutor has reason to believe that a ground for disqualification exists in relation to him or her, he or she shall make a request to be excused and shall not wait for a request for disqualification to be made in accordance with article 41, paragraph 2, or article 42, paragraph 7, and rule 4.30. The request shall be made and the Presidency shall deal with it in accordance with rule 4.29.

### Rule 4.32
### Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties of the death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar.

### Rule 4.33
### Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall communicate to the Presidency, in writing, his or her decision to resign. The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties.

2. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall endeavour to give notice of the date on which his or her resignation will take effect at least six months in advance. Before the resignation of a judge takes effect, he or she shall make every effort to discharge his or her outstanding responsibilities.

### Subsection 3
Replacements and alternate judges

#### Rule 4.34
Replacements

1. A judge may be replaced for objective and justified reasons, *inter alia*:

(a) Resignation;

(b) Accepted excuse;

(c) Disqualification;

(d) Removal from office;

(e) Death.

2. Replacement shall take place in accordance with the pre-established procedure in the Statute, the Rules and the Regulations.

#### Rule 4.35
Alternate judges

Where an alternate judge has been assigned by the Presidency to a Trial Chamber pursuant to article 74, paragraph 1, he or she shall sit through all proceedings and deliberations of the case, but may not take any part therein and shall not exercise any of the functions of the members of the Trial Chamber hearing the case, unless and until he or she is required to replace a member of the Trial Chamber if that member is unable to continue attending.

## Section V
Publication, languages and translation

#### Rule 4.36
Publication of decisions in official languages of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:

(a) All decisions of the Appeals Division;

(b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;

(c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;

(d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).

2. Decisions on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.

3. The Presidency may decide to publish other decisions in all the official languages when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

## Rule 4.37
### Working languages of the Court[1]

1. For the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language when:

(a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or

(b) The Prosecutor and the defence so request.

2. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings.

## Rule 4.38
### Translation and interpretation services

The Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.

## Rule 4.39
### Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

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[1] [18] In order to facilitate the application of this rule, it may be necessary to include a rule in the Regulations of the Court stating that the Court should make all possible efforts to ensure that at least one of the judges of the Chambers in which the case is heard knows the official language used as a working language in a given case. **(Pending)**

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# Chapter 2
# Composition and Administration of the Court

**Addendum**

Add a new sentence at the end of the rule, reading:

Alternate judges shall be designated in accordance with a procedure pre-established by the Court.

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# Report of the Working Group

# Chapter 3
# Jurisdiction and admissibility

## Section I
## Declarations and referrals relating to articles 11, 12, 13 and 14

### Rule 2.1
### Declaration provided for in article 12, paragraph 3

1. The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.

2. When a State lodges, or declares to the Registrar its intent to lodge, a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to sub-rule 1, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9, and any rules thereunder concerning States Parties, shall apply.

### Rule 2.2
### Referral of a situation to the Prosecutor

A referral of a situation to the Prosecutor shall be in writing.

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## Section II
## Initiation of investigations under article 15

### Rule 2.3
Information provided to the Prosecutor under article 15, paragraphs 1 and 2

Where information is submitted under article 15, paragraph 1, or where oral or written testimony is received pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of such information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute.

### Rule 2.4
Testimony under article 15, paragraph 2

1. The provisions of rules 5.9 and 5.10 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.

2. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber.

### Rule 5.1
Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

### Rule 2.5
Decision and notice under article 15, paragraph 6

1. Where a decision under article 15, paragraph 6, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.

2. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

### Rule 2.6
Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.

2. A request for authorization by the Prosecutor shall be in writing.

3. Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.

4. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.

5. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations.

6. The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

## Section III
Challenges and preliminary rulings under articles 17, 18 and 19

### Rule 2.7
Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17, paragraph 1, may choose to bring to the attention of the Court showing that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

**Rule 2.8**
Notification provided for in article 18, paragraph 1

1. Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.

2. A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month time limit provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

**Rule 2.9**
Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

**Rule 2.10**
Application by the Prosecutor under article 18, paragraph 2

1. An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 2.9 shall be communicated by the Prosecutor to the Pre-Trial Chamber.

2. The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

**Rule 2.11**
Proceedings concerning article 18, paragraph 2

1. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.

2. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.

3. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

**Rule 2.12**
Application by the Prosecutor following review under article 18, paragraph 3

1. Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.

2. Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.

3. The proceedings shall be conducted in accordance with rules 2.10, sub-rule 2, and 2.11.

**Rule 2.13**
Provisional measures under article 18, paragraph 6

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered ex parte and in camera. The Pre-Trial Chamber shall rule on the application on an expedited basis.

**Rule 2.14**
Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.

2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.

3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.

4. The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility.

**Rule 2.15**
Participation in proceedings under article 19, paragraph 3

1. For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

(a) Those who have referred a situation pursuant to article 13;

(b) The victims who have already communicated with the Court in relation to that case or their legal representatives.

2. The Registrar shall provide those referred to in sub-rule 1, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

3. Those receiving the information, as provided for in sub-rule 1, may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

4. The present rule is applicable to the procedures covered in rules 2.11 and 2.12 whenever an issue of jurisdiction or admissibility is involved.

## Rule 2.16
### Competent organ to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 5.27.

## Rule 2.17
### Provisional measures under article 19, paragraph 8

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 2.13 shall apply.

## Rule 2.18
### Proceedings under article 19, paragraph 10

1. If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 2.14, 2.15 and 2.17 shall be applicable.

2. The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.